IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

WP(C).No. 22979 of 2006(I)

AGAINST THE ORDER IN OS 863/2000 IN
EP.743/2004 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

TIMIN TOMY, S/O.TOMY ,
OLLUKKARAN HOUSE, EDAKKUNNY VILLAGE DESOM,
THRISSUR DISTRICT.

BY ADV. SRI.JIJO PAUL

RESPONDENTS:

ST.RAPHAEL CHITTIES AND LOANS (PVT.)
LIMITED,
EDAKKUNNY VILLAGE, DESOM, THRISSUR,
REP. BY ITS MANAGING DIRECTOR.

BY ADV. SRI.N.P.SAMUEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of the Execution Petition in E.P. 743/04 in O.S.863/00 before the Sub Court, Thrissur.

Ext.P2:- True copy of the counter statement filed by the petitioner in E.P.743/2004 in O.S.863/2000 before the Subordinate Judges Court, Thrissur dated 6-4-2005.

Ext.P3:- True copy of the proceedings dated, 14-3-2006 in E.P.743/2004 in O.S. 863/2000 before the Sub Court, Thrissur.

Ext.P4:- True copy of the Proceedings dated, 12-4-2006 in E.P.743/2004 in O.S.No.863/2000 before the Sub Court, Thrissur.

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.22979 OF 2006

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Dated this the 5th day of January,2007

JUDGMENT

Respondent is the decree holder. The father of petitioner brother of the father and their wives are the judgment debtors. A decree for realisation of the amount due by sale of mortgaged property was granted in O.S.863/00 on the file of Sub Court, Thrissur. Respondent filed E.P.743/04 for realisation of the decree debt by sale of the mortgaged property. As the encumbrance certificate disclosed that there was a sale in favour of the petitioner, who is the son of the first judgment debtor, he was impleaded as 5th respondent in the execution petition. To the Rule 66 notice issued 5th respondent in the E.P filed Ext.P2 objection wherein it was contended by him that on 2.11.01 after discharging the entire charge over the properties paying the amount due to respondent and

getting the charge withdrawn he obtained the properties as per sale deed dated 2-11-01 and therefore the property cannot be sold. Under Ext.P3 order dated 14.3.06 executing court directed proclamation and sale of the mortgaged property on 12.4.06. The property was sold on 12.4.06. E.P. was posted for confirmation of sale to 12.6.03. This petition was filed, by the 5th respondent in the execution petition, under Article 227 of the Constitution of India challenging Ext.P3 order contending that his objection was not considered at all and therefore the order is to be quashed.

2. Learned counsel appearing for petitioner and respondent were heard.

3. The argument of learned counsel appearing for petitioner was that when petitioner specifically contended that he had settled the matter with the decree holder and got the charge over the properties raised and therefore decree holder is not entitled to proceed against the

property, that objection was not considered by the executing court and therefore executing court is to be directed to consider the objection and pass appropriate order thereafter. Learned counsel appearing for respondent submitted that the attachment claimed by the petitioner was not in O.S.863/00 but in O.S.2993/00 and there is no bona fide or merit in the objection and in such circumstances, petition is only to be dismissed.

4. On going through Ext.P3 order, it is clear that executing court did not consider Ext.P2 objection filed by petitioner at all. Even if the objections raised by petitioner are unsustainable, before settling the proclamation for sale, executing court is obliged to consider the objection raised by petitioner and pass appropriate orders. If executing court had considered the objection and stated that the objections are not sustainable, that would have been suffice. Unfortunately, Ext.P3 order shows that objection was not even considered. In such

circumstance, Ext.P3 order is quashed. The executing court is directed to consider Ext.P2 objection, after hearing the petitioner and respondent and pass appropriate order and proceed with the execution petition. When Ext.P3 order is quashed, automatically the consequent sale will not stand. Therefore Ext.P4 order is also quashed. Executing court to consider the objection filed by petitioner to the notice served under Rule 66 and pass appropriate orders and then proceed with further steps in the E.P.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006